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HONORABLE WHITMAN L. HOLT
Chapter 11

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

EASTERDAY RANCHES, INC.
et. al.,

Debtors.¹

Chapter 11

Lead Case No. 21-00141-WLH11
Jointly Administered

**MOTION FOR PAYMENT OF
ADEQUATE PROTECTION AND
IN THE ALTERNATIVE RELIEF
FROM STAY**

COMES NOW, Bank of the West, (“BOTW”), by and through its attorneys Foster Garvey PC and Deborah A. Crabbe, who moves for the entry of an order authorizing, as adequate protection pursuant to 11 U.S.C. §§ 361 and 363(e), the payment to BOTW of all sums due and owing from Easterday Farms, a Washington general partnership (“Easterday Farms”) to BOTW under a certain contract for the lease of a Mack Truck that was sold without notice to BOTW in

¹ The Debtors along with their case numbers are as follows: Easterday Ranches, Inc., (21-00141) and Easterday Farms, a Washington general partnership (21-0076-WLH11).

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1 the current sum of \$61,001.52, and in the alternative, relief from stay pursuant to
2 11 U.S.C. § 362(d)(1), Local Rule 4001 and Fed. R. Bankr. P. 4001, 9013, and
3 9014, so that BOTW may take collection action against Easterday Farms for all
4 sums due and owing to BOTW from the bankruptcy sale of a 2015 Mack Truck²,
5 without notice to BOTW. BOTW also moves the Court for an order directing that
6 enforcement of the order not be stayed for fourteen (14) days as provided for in
7 F.R.B.P 4001(a)(3).
8

9 I. JURISDICTION AND VENUE

10 This Court has jurisdiction over this matter, pursuant to 28 U.S.C. 157 and
11 1334. This is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2).
12

13 Venue is proper before this Court, pursuant to 28 U.S.C. §§ 1408 and 1409.

14 II. FACTUAL BACKGROUND

15 1. On or about December 27, 2019 Easterday Farms entered into a
16 financing contract number 501-76102390-006 (the “Contract”) with Mack
17 Financial Services, a division of VFS US LLC (“VFS”) for the purchase of a 2015
18 Mack CHU613, VIN # 1M1AX07YXFM025968 (the “Truck”) at which time, the
19 Contract was simultaneously assigned to VFS US LLC (“VFS”). See Declaration
20 of Tyerone Tye (hereinafter “Tye Declaration”), ¶ 9, **Ex. A, B**.
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24 ² BOTW considered seeking an order from the Court confirming that the stay was
25 not in effect pursuant to 11 U.S.C. § 362(c)(4)(A)(ii) and LR 4001-1(b) so that it
26 could take possession of the truck at issue in this matter, but the language of the
Court’s sale order at Dkt No. 1144 at 3:15-21 appears to preclude any rights
BOTW may assert with respect to the recovery of the truck.

1 2. As security for repayment of the purchase price for the Truck, VFS
2 retained a security interest in the Truck and had its name placed on the title to the
3 Truck as evidence of the security interest. *Tye Dec.*, ¶ 11, **Ex. C**.

4 3. Under the terms of the Contract, Easterday Farms was to make
5 quarterly payments in the sum of \$5,083.46 on or before the 27th day of March,
6 June, September and December for a total annual payment of \$20,333.84. *Tye*
7 *Dec.*, ¶ 12, **Ex. A** at 5.

8 4. On or about February 8, 2021, Easterday Farms filed bankruptcy. *See*
9 Case No. 21-00176-WLH11.

10 5. At the time the Easterday Farms bankruptcy case was filed, the Court
11 ordered procedural consolidation and joint administration of the Chapter 11 cases
12 of Easterday Ranches, Inc. (Case No. 21-00141-WLH11) with the Easterday Farms
13 bankruptcy (Case No. 21-00176-WLH11) with Case No. 21-00141-WLH11
14 designated the case for filing all matters affecting the cases. *See* Case No. 21-
15 00176-WLH11 at Dkt No. 5.

16 6. On or about February 12, 2021, VFS assigned the Lease, including the
17 security interest in the Truck, to BOTW and provided notice of the assignment to
18 Easterday Farms. *Tye Dec.*, ¶ 13, **Ex. D**.

19 7. No attempt was made by Easterday Farms to amend its mailing matrix
20 to add BOTW to the notice list. *See* Case No. 21-00176-WLH11 (Mailing Matrix)
21 and Case No. 21-00141-WLH11 (Mailing Matrix) despite the fact that VFS
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1 provided notice to Easterday Farms of the assignment to BOTW of the Lease and
2 security interest in the Truck. *Tye Dec.*, ¶ 13, **Ex. D**.

3 8. As a result, BOTW did not receive notice of matters undertaken in the
4 bankruptcy affecting the Truck. *Tye Dec.*, ¶ 18.

5 9. Specifically, in September 2021, the Truck was sold to Blue Tag
6 Farms, LLC as part of the sale of equipment approved by the Court in its Order (A)
7 Approving Sale of Equipment to Blue Tag Farms, LLC, and (B) Granting Related
8 Relief (collectively the “Sale Order”). *See* Dkt No. 1144. BOTW did not receive
9 notice of the motion to sell the Truck, copies of a subsequent notices regarding the
10 sale of the equipment, including the Truck, or a copy of the notice of the entry of
11 the Sale Order. *See* Dkt Nos. 1053, 1056, 1082, 1101, 1117.

12 10. The Sale Order provides that any “liens, claims, interests, and
13 encumbrances shall attach to the sale proceeds ultimately attributable to the
14 Equipment in which any creditor alleges an interest, in the same order of priority,
15 with the same validity, force and effect that such creditor had prior to the sale....”
16 *See* Dkt No. 1144 at 3:17-20.

17 11. On or about October 27, 2021, equipment buyer Blue Tag Farms,
18 LLC sent a letter to VFS requesting that VFS turn over the title and release the
19 liens to certain vehicles sold pursuant to the Sale Order, including the Truck. *Tye*
20 *Dec.*, ¶¶ 15-16, **Ex. E**.

21 12. VFS sent the letter to BOTW in order for BOTW to resolve the issue
22 with respect to the Truck. *Tye Dec.*, ¶ 16.

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1 13. On or about November 3, 2021 and November 10, 2021, BOTW
2 advised counsel to Easterday Farms that BOTW did not receive notice of the sale
3 of the Truck and reserved all of its rights with respect to the Truck. *Tye Dec.*, ¶
4 19; *Crabbe Dec.*, **Ex. A.**

5 14. On or about November 11, 2021, as a follow up to the discussion with
6 Easterday Farms counsel, BOTW sent a letter to counsel for Easterday Farms
7 memorializing the issues with respect to the sale of the Truck and the conversation
8 regarding the Truck. *Crabbe Dec.* **Ex. B.**

9 15. On November 11, 2021, BOTW was advised that it was the intent of
10 Easterday Farms to pay BOTW in full for the Truck. *Tye Dec.*, ¶ 19; *Crabbe Dec.*,
11 **Ex. C.**

12 16. Despite efforts to resolve the issue, BOTW has heard nothing further
13 from Easterday Farms' counsel with respect to the payment for the Truck. *Tye*
14 *Dec.*, ¶ 20.

15 17. At the present time, the balance due and owing to BOTW for
16 Easterday Farms' purchase of the Truck equals \$61,001.52, which includes a credit
17 in the sum of \$5,083.36 against the original purchase price of \$66,084.88 for one
18 payment made by Easterday Farms. BOTW has not received a single payment
19 from Easterday Farms since the bankruptcy filing. *Tye Dec.*, ¶ 21.

20 18. BOTW believes the current liquidation value of the Truck equals is
21 approximately \$58,833.45 based upon internal records from recent equipment sales
22 in the last 180 days. *Tye Dec.*, ¶ 22.

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III. RELIEF REQUESTED AND EVIDENTIARY SUPPORT

By way of this Motion, BOTW seeks an order authorizing, as adequate protection, the payment to BOTW of all sums due and owing to BOTW under the terms of the Contract as a result of the sale of the Truck. In the alternative, BOTW requests an order for relief from stay for cause, including lack of adequate protection pursuant to 11 U.S.C. §362(d)(1), so that BOTW may collect sums owed by Easterday Farms to BOTW for the lease of the Truck in accordance with the terms of the Contract in the present sum of \$61,001.52. BOTW relies upon the Tye Declaration and exhibits thereto in support and the Declaration of Deborah A. Crabbe and exhibits thereto in support.

IV. LEGAL ARGUMENT

1. Payment of Adequate Protection.

BOTW requests that the Court enter an order directing Easterday Farms to immediately pay to BOTW from the sales proceeds of the equipment, which included the Truck., all sums due and owing to BOTW in the current sum of \$61,001.52 in accordance the terms of the Contract, pursuant to 11 U.S.C. §§ 361 and 363. BOTW reserves the right to increase this sum for late fees and legal fees and costs if this matter is not resolved by way of this motion.

Under 11 U.S.C. § 361, the Court may order adequate protection in conjunction with the sale of property under 11 U.S.C. § 363(e). “While ... adequate protection is not defined in the Bankruptcy Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1)

1 periodic cash payments equivalent to decrease in value, 2) an additional or
2 replacement lien on other property, or 3) other relief that provides the indubitable
3 equivalent.” *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir.1984) citing *In re Curtis*,
4 9 B.R. 110, 111-112 (B.Ct.E.D.Penn.1981).

5
6 As previously represented herein, Easterday Farms failed to make a single
7 post-petition payment to BOTW for the use of the Truck prior to the September
8 2021 sale, despite the fact that Easterday Farms received notice in February 2021
9 that BOTW was the successor-in-interest to the original lender, VSF. *Tye Dec.*, ¶
10 13, 21, **Ex. D**. Accordingly, there were no periodic cash payments made to BOTW
11 prior to the sale of the Truck and certainly, no cash payment made to BOTW since
12 the wrongful sale of the Truck without notice to BOTW. *Tye Dec.*, ¶ 21.

13
14 And while BOTW received a replacement lien in the sales proceeds, BOTW
15 has no idea what Easterday Farms will allege is the purported lien value given the
16 complete lack of information on how the sales price will be apportioned for the
17 sold equipment, including the Truck. *See Dkt.* The only reference in the docket to
18 how each item of equipment was valued is a recital in the purchase agreement that
19 an appraisal was performed and delivered on July 12, 2021, and that the buyer
20 received a redacted copy of an appraisal for the equipment detailing the orderly
21 liquidation value of the equipment in conjunction with the due diligence process.
22 *See Dkt No. 1048 at 38, Recital E.* This gives BOTW no assurance that it will be
23 made whole from the sale irrespective of the lien granted to BOTW via the Sale
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1 Order so it is BOTW's position that the replacement lien does not constitute any
2 assurances of adequate protection.

3 Finally, BOTW has not been provided with any other relief that would
4 constitute the indubitable equivalent to BOTW of the amount Easterday Farms
5
6 owes to BOTW pursuant to the terms of the Lease.

7
8 Thus, it is BOTW's position that it is not adequately protected. BOTW's
9 collateral has been sold without notice to BOTW, and Easterday Farms has failed
10 to pay off the amount owed to BOTW pursuant to the terms of the Contract.
11 BOTW is entitled to be paid in full from the proceeds for the sale of the equipment,
12 which included the Truck. Accordingly, BOTW requests the Court order such
13 payment including principal and accruing interest, legal fees and costs, as adequate
14 protection.
15

16 **2. Relief from Stay.**

17 Under 11 U.S.C. § 362(d)(1), the court shall grant a motion for relief from
18 the stay by terminating, annulling, modifying, or conditioning the stay "for cause,
19 including the lack of adequate protection" of the moving party's interest in
20 property of the debtor. The use of the word "including" in the section, however, is
21 not a limiting term. 11 U.S.C. § 102(3). Thus, "[l]ack of adequate protection is
22 but one example of 'cause' for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (9th
23 Cir. BAP 1985). In fact, "cause" for lifting the automatic stay has no clear
24 definition and is determined on a case-by-case basis. *Benedor Corp. v. Conejo*
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1 *Enters. (In re Conejo Enters, Inc.)*, 96 F.3d 346, 352 (9th Cir. 1996); *In re Tucson*
2 *Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); *Delaney–Morin v. Day (In re*
3 *Delaney–Morin)*, 304 B.R. 365, 369 (9th Cir. BAP 2003) (*citing MacDonald v.*
4 *MacDonald (In re MacDonald)*, 755 F.2d 715, 717 (9th Cir. 1985)).

5
6 Here, BOTW requests that if the Court is not inclined to order the adequate
7 protection payment requested above, that the Court enter an order granting relief
8 from stay so that BOTW may proceed with its state court remedies to collect sums
9 due and owing to BOTW from Easterday Farms in accordance with the Contract
10 for the Lease of the Truck and the post-petition sale of the Truck without notice to
11 BOTW in the current sum of \$61,001.52. BOTW reserves the right to increase this
12 sum for late fees and legal fees and costs if this matter is not resolved by way of
13 this motion.
14

15 There are a number of causal bases for granting the relief requested by
16 BOTW. First, Easterday Farms obtained an Order from the Court authorizing the
17 sale of certain equipment, including the Truck, without notice to BOTW despite
18 the representation to the Court that notice would be provided to “known secured
19 creditors”. *See* Dkt No. 1048 at 22:1-8. Easterday Farms was provided with notice
20 of the transfer of the Lease from VFS to BOTW and therefore, BOTW was a
21 known creditor. *See Tye Dec.*, ¶ 13, **Ex. D.**

23 Second, this sale occurred in September 2021 and it is now the beginning of
24 March 2022. More than five months have passed since the entry of the Sale Order
25 and, despite promises from Easterday Farms counsel in early November 2021 that
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1 BOTW would be paid in full for the Truck, BOTW has received no payment and
2 no further communication from Easterday Farms. *Crabbe Dec.*, **Ex. B.**

3 Third, in accordance with the Sale Order at Dkt No. 1144, the Court
4 conditioned the sale of the equipment, including the Truck, free and clear of liens
5 provided that such liens attach to the proceeds in the same order and priority as
6 existed in the equipment prior to the sale. *See* Dkt No. 1144 at 3:15-21.
7 Accordingly, BOTW, as the holder of a first lien in the Truck, holds a property
8 interest in the proceeds and should not have to continue to wait ad infinitum for the
9 payment it is entitled to receive from the sale of the Truck.
10

11 Fourth, and perhaps most important, it is not clear that BOTW is adequately
12 protected as previously set forth above.
13

14 Accordingly, if the Court is not inclined to grant adequate protection to
15 BOTW, BOTW requests relief from stay so that it may proceed with its State Court
16 remedies against Easterday Farms for all sums due and owing under the Contract,
17 including principal and accruing interest, legal fees and costs.
18

19 **V. CONCLUSION**

20 Based on the foregoing arguments, BOTW respectfully request that this
21 Court enter an order directing Easterday Farms to immediately pay to BOTW all
22 sums due and owing to BOTW under the terms of the Lease in the current sum of
23 \$61,001.52. In the alternative, BOTW respectfully requests that the Court enter an
24 order terminating the automatic stay for cause to permit BOTW to exercise all of
25 its rights and remedies under applicable law with respect to the proceeds from the
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1 sale of the Truck to collect the sum of \$61,001.52. BOTW reserves the right to
2 increase this sum for late fees and legal fees and costs if this matter is not resolved
3 by way of this motion. BOTW also requests that the Court direct that the
4 enforcement of the order not be stayed for fourteen (14) days as provided for in
5 F.R.B.P 4001(a)(3).
6

7
8 DATED this 24th day of March, 2022.

9 **FOSTER GARVEY P.C.**

10 */s/ Deborah A. Crabbe*

11 By

12 Deborah A. Crabbe, WSBA #22263

13 *Attorneys for Bank of the West*
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